

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF SEPTEMBER 21, 2005**

REGULAR MEETING

9:00 A.M.

SEPTEMBER 21, 2005

PRESENT:

COMMISSIONERS:	Paul Biane, Chairman	Paul J. Luellig Jr., Alternate
	Bob Colven, Vice Chairman	Mark Nuaimi
	Kimberly Cox	Richard P. Pearson
	James V. Curatalo, Alternate	A. R. "Tony" Sedano, Alternate
	Josie Gonzales, Alternate	Diane Williams
	Dennis Hansberger	

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark H. Alsop, Legal Counsel
Samuel Martinez, LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Debby Chamberlin, Clerk to the Commission

REGULAR SESSION - CALL TO ORDER – 9:02 A.M.

In the absence of Chairman Biane, Vice Chairman Colven calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Vice Chairman Colven requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There is no one.

(It is noted that Chairman Biane arrives at 9:03 and assumes the Chair.)

APPROVAL OF MINUTES FOR REGULAR MEETING OF AUGUST 17, 2005 – MINUTES APPROVED

Chairman Biane calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Pearson moves approval of the minutes as presented, seconded by Commissioner Colven. Chairman Biane calls for objections to the motion. There being none, the voice vote on motion is as follows: Ayes: Biane, Colven, Hansberger, Luellig, Pearson, Williams. Noes: None. Abstain: None. Absent: Cox and Nuaimi (Luellig voting in his stead).

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar. Chairman Biane states that the consent calendar consists of: (1) approval of the Executive Officer's expense report; (2) approval of payments as reconciled for the months of July and August 2005 and noting cash receipts; (3) consideration of an exemption request for LAFCO SC#255 – Out-of-Agency Service Contract for the Provision of Water Service by County Service Area 70 Improvement Zone J to territory within the City of Hesperia; and (4) consideration of LAFCO SC#260-City of Upland Sewer Service Agreement No. SSA-2005-07-01. A Visa Justification for the Executive Officer's expense report and staff reports for the reconciled payments, the exemption request for LAFCO SC#255 and LAFCO SC#260 have been prepared and a copy of each is on file in the LAFCO office and is made a part of the record by its reference herein. The exemption request for LAFCO SC#255 has been advertised as required by law through publication in The Sun, the Hesperia Resorter and the Victor Valley Daily Press, newspapers of general circulation in the area.

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SC#260 has been advertised as required by law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. In addition, individual mailed notice of the request for exemption and the service contract was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

The staff recommendation is that the Commission approve the Executive Officer's expense report, the payments as reconciled and the service contract and continue consideration of the exemption request for LAFCO SC#255 to October 19, 2005.

Chairman Biane asks whether there is anyone present wishing to discuss any of the consent calendar items. There is no one.

Commissioner Pearson moves approval of the consent calendar, seconded by Commissioner Williams. Chairman Biane calls for any objections to the motion. There being none, the voice vote on the motion is as follows: Ayes: Biane, Colven, Hansberger, Luellig, Pearson, Williams. Noes: None. Abstain: None. Absent: Cox and Nuaimi (Luellig voting in his stead).

CONTINUED ITEMS:

CONTINUED FROM AUGUST 17, 2005 – CONSIDERATION OF SPECIAL COUNSEL POLICY AND DESIGNATION OF SPECIAL COUNSEL FOR LAFCO 2981 – SPHERE OF INFLUENCE REVIEW (REDUCTIONS) FOR CITIES OF FONTANA AND RIALTO AND WAIVER OF COSTS ASSOCIATED WITH SPECIAL COUNSEL - RETAIN JEFFREY GOLDFARB AS SPECIAL COUNSEL; DIRECT THAT APPLICATION, NOT BIC, BE CHARGED FOR SPECIAL COUNSEL COSTS AT STANDARD LAFCO COUNSEL RATE; ACCEPT OFFER OF SUPERVISOR GONZALES FOR PAYMENT OF SPECIAL COUNSEL COSTS UP TO \$10,000

LAFCO conducts a continued public hearing to consider the need for Special Counsel for LAFCO 2981-Sphere of Influence Review (Reductions) for the Cities of Fontana and Rialto, the waiver of the costs associated with Special Counsel and the entire policy for Special Counsel. Notice of the original hearing on July 20, 2005, was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. This hearing is continued from August 17, 2005. Individual mailed notice of this hearing was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

(It is noted that Commissioner Cox arrives at 9:05 a.m.)

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says that the need for Special Counsel for the Bloomington Incorporation Commission's (BIC's) request for sphere reductions has been discussed over the past two months and that at the August 17 hearing the Commission requested staff to review the entire policy for Special Counsel and return at the September hearing with a discussion of both issues. She says staff has reviewed the equity of the Special Counsel policy in relation to application fees and that staff concurs with the expressions of concern that the payment of direct costs is only applied when Special Counsel is required because Legal Counsel Clark Alsop has a conflict or some problem with representing the Commission. She reports that until 1995, the Commission had a separate deposit for Legal Counsel charges but says it was eliminated to simplify the complexity of the Fee Schedule. She says that in 2001, the Special Counsel deposit was instituted because of policy shifts related to the waiver of conflict for LAFCO Legal Counsel and says applicants were required to pay the costs for the use of outside Counsel.

Ms. McDonald says there are three options outlined in the staff report for addressing Legal Counsel charges. She says staff does not support option one, to eliminate all fees or charges related to LAFCO Legal Counsel or Special Counsel except for the Legal Defense Policy for litigation, because it puts the burden for funding these activities on all the agencies that support the Commission. She says staff does

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not support option three, to retain the current fee policy as outlined in the Fee Schedule because it gives no credit for the Legal Counsel costs in the existing fee structure when Special Counsel is required. She says staff supports the second option, to establish a fee deposit for all Legal Counsel charges, since it is the most equitable to applicants and those required to fund the Commission. Ms. McDonald says the staff recommendation is to modify the existing Fee Schedule to: (a) rescind the existing Special Counsel fee; (2) provide for a separate Legal Counsel Deposit; establish that deposit at \$500 and indicate that applicants will be responsible for all costs associated with Legal Counsel review of the proposal; (3) modify existing application categories under LAFCO Filing Fees for Jurisdictional Change Items (1) through (6) through a \$500 reduction to reflect the establishment of the separate Legal Counsel Deposit; and (d) continue adoption of LAFCO Resolution No. 2896 reflecting these changes to the October 19, 2005 hearing.

(It is noted that Commissioner Curatalo arrives at 9:10 a.m.)

Ms. McDonald says that regarding the waiver of the Legal Charges for the BIC application for the sphere review, the Commission's consensus last month was that BIC would not be charged for the payment of Legal Counsel charges. But she says it was not clear whether the Commission wanted to accept Supervisor Gonzales' offer. She says staff is recommending that Jeffrey Goldfarb be retained as Special Counsel and that the Commission accept the offer for payment of costs up to \$10,000 from Supervisor Gonzales. However, she says the Commission may also waive the Legal Counsel cost in its entirety.

Chairman Biane states that he has no requests to speak.

Commissioner Sedano asks Mr. Alsop for his opinion on this issue. Mr. Alsop says the staff recommendation will bring the policy back to how it was years ago when there was a deposit for Legal Counsel costs. He says this is a policy decision for the Commission. In response to inquiry of Commissioner Colven, Mr. Alsop says that Supervisor Gonzales' offer of \$10,000 is a one-time offer for only this proposal.

Commissioner Hansberger says there are three issues, and the first is the basic question that when Legal Counsel has conflict, how will that responsibility be disposed. He says that Mr. Alsop is the attorney for the City of Fontana (hereinafter referred to as "the City") as well as the Commission, which causes him a conflict, but not the community of Bloomington. He says he sees no reason why the cost should be shifted to the applicant when the applicant does not cause the conflict. Second, he asks if the Commission adopts a deposit, whether it will be charged at the hourly rate charged by Mr. Alsop or at the Special Counsel's rate, which is higher. He says the third issue is the offer from Supervisor Gonzales to pay up to \$10,000 in costs so that the Bloomington community will not have that burden, but he says that should be answered after it is decided whether or not BIC should have to pay Special Counsel costs.

Chairman Biane comments that is part of the discussion they had last month and says he agrees with Commissioner Hansberger that BIC did not cause the conflict. However, he says if the Commission agrees not to charge BIC, then the burden is shifted to other applicants to pay for the conflict that BIC's application has given rise to. Ms. McDonald points out that the Commission's policy gives it the ability to waive fees at any time it wishes to do so. She says if the Commission wants to expand its fee waiver policy to include cases where the conflict arises because of no fault of the applicant, staff can address that and bring it back to be considered by the Commission next month.

Commissioner Pearson says that the concern of Commissioner Hansberger is valid, but he discusses that an applicant must be able to come to the table with something and that he does not think a \$500 deposit is unreasonable. He says waiving the whole fee arbitrarily is not fair to the public at large and that the applicant must be aware that the costs could go higher as the proposal goes forward. He discusses that the Board of Supervisors has agreed to help out in this particular case, but he says that is a separate issue and should not be part of this deliberation. He says the focus should be on the fact that BIC must bring something to the table to initiate and continue this action.

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Chairman Biane says he thinks both concerns can be accommodated in the current policy because the Commission can waive the fees on a case-by-case basis. He points out that if Supervisor Gonzales' offer of \$10,000 was not there, the Commission could still waive the cost due to the hardship it would cause BIC. He says he personally does not want to change the policy, but adds that he agrees with Commissioner Pearson that the applicant must step up to the plate with something to show that there is muscle and community support behind the proposal. He says he is kind of in favor of supporting staff recommendation but does not want to cut off the debate.

Commissioner Hansberger says the first issue is whether they should accept the Board of Supervisors' offer, which he says they should. He says the second issue is whether the applicant should be impacted by the fact that the Commission and the City have the same Counsel, when the applicant is not the source of the problem. He says he feels an applicant should have to pay the usual and normal Legal Counsel costs but should not have to pay the difference in hourly rate, which is about \$80 for Special Counsel, unless the applicant is the cause for the conflict, which in this case BIC is not. Ms. McDonald reports that in each case where Special Counsel is required, an agenda item will be presented and the Commission can direct at that time whether the applicant will be charged the standard rate of Mr. Alsop or, if the source of conflict is caused by the applicant, the applicant can pay the entire charge.

Commissioner Hansberger moves, seconded by Commissioner Luellig, that: (1) the BIC application be responsible for paying the Legal Counsel costs at the usual rate charged by Mr. Alsop; (2) Supervisor Gonzales' offer of up to \$10,000 be accepted; and (3) if necessary, Jeffrey Goldfarb be retained as Special Counsel. He says the existing policy does not need to be changed and that this decision applies to this application only.

In response to Commissioner Williams, Commissioner Hansberger explains that the \$10,000 will be applied against the usual and customary Legal Counsel charges. He says the application is responsible for the fees, and that in this instance, the County will pay the fees up to \$10,000.

Chairman Biane says Supervisor Gonzales wanted to support the Bloomington community and pay for the fees regardless of the differential. Ms. McDonald clarifies that the motion is that the Commission would only charge the actual rate of Mr. Alsop against the \$10,000 and that the differential in hourly rates would be the responsibility of the Commission. Commissioner Luellig says his understanding was that Supervisor Gonzales wanted to bear the entire legal cost and that was the purpose of the \$10,000, regardless of the differential. He says he does not want BIC to pay a dime; that the fact that Special Counsel must be used is not their fault and he agrees with Commissioner Hansberger that they should not pay any differential.

Chairman Biane says he is going to oppose the motion in principal because he was in support of staff recommendation. He calls for a voice vote on the motion and it is as follows: Ayes: Colven, Cox, Hansberger, Luellig, Pearson, Williams. Noes: Biane. Abstain: None. Absent: Nuaimi (Luellig voting in his stead).

CONTINUED FROM AUGUST 17, 2005 – CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2919; AND (2) LAFCO 2919 – SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT – INDICATE INTENT TO APPROVE ITEMS 1 AND 2 OF STAFF REPORT AT FEBRUARY 15, 2006 HEARING; DIRECT EXECUTIVE OFFICER TO ESTABLISH COMMITTEE TO REVIEW POSSIBLE CONSOLIDATION OF SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT AND SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT; AND REQUIRE REPORT PROVIDED AT FEBRUARY HEARING RESPOND TO QUESTIONS ON EFFECTS OF CONSOLIDATION AS FOLLOWS: (A) PRE-1914 WATER RIGHTS; (B) COST EFFECTIVENESS AND EFFICIENCY OF CONSOLIDATION; AND (C) PRESERVATION OF WASH PLAN

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LAFCO conducts a continued public hearing to consider a service review and sphere of influence update for the San Bernardino Valley Water Conservation District (hereinafter referred to as the "SBVWCD" or "District"). Notice of the original hearing on March 16, 2005, was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. Individual mailed notice of this hearing, which is continued from August 17, 2005, was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states this item was originally considered at the March 16, 2005 hearing and was continued to the August 17 hearing at the request of the SBVWCD. She reports that at the conclusion of the March 16 hearing, staff's recommendation was adopted to request additional information related to financial issues for the District and local governance issues; and she says in August the Commission asked staff to return with additional information on integrated water management plans and the Upper Santa Ana Water Resources Association. She says the staff report provided for today's hearing includes the staff report for the August hearing, the response from the SBVWCD to that staff report, and additional items received prior to publication of that staff report. She says the Commissioners have been presented this morning with additional information from the SBVWCD and the San Bernardino Valley Municipal Water District (hereinafter referred to as "Muni"), and a letter received this morning from the City of Highland.

Ms. McDonald discusses that staff believes this service review is timely and says the various staff reports received by the Commission identify and address all the mandatory service review factors required by Government Code Section 56430. She reports that the August staff report identifies questions regarding the relationship of the District's costs for administration versus its replenishment activities and costs for the Board of Directors and she says the District's response is attached to the September staff report. She says the District has indicated that its sole purpose is for groundwater recharge activities and that its expenditures reflect that. She says the District provided information regarding the Board's expenses, indicating that they are less than what the charges could have been if the Directors had participated in the allowable number of meetings per month, and says the District pointed out the relationship of its Board costs compared to those of Muni and the City of Redlands.

Ms. McDonald discusses that after the March hearing, staff requested a response from the District to three options for its future governance: (1) expansion of its sphere to encompass the whole of the Bunker Hills Basin (hereinafter referred to as the "Basin"); (2) possible consolidation with Muni; and (3) possible consolidation with the San Bernardino County Flood Control District (hereinafter referred to as the "FCD"). She says the question that staff is still posing is "Why are there three agencies within this portion of the County authorized to provide the same service and is this division appropriate? If not, what about addressing the whole of the Basin?" She reports that the District submitted Resolution No. 409 indicating: (1) that it did not support consolidation with Muni or the FCD because the purposes of all three Districts are different, which position has been concurred with by Pat Mead, Director of Public Works; and (2) that it did not support a sphere expansion. She notes that Muni has indicated that it is able to address the consolidation and could do so without requiring the existing groundwater charge of the District.

Ms. McDonald says the August staff report provides an outline of the water spreading activities occurring in the Basin. She discusses that the options for local governance were outlined at a meeting on June 9 with a group known as the "Upper Santa Ana Water Resources Association." She says each agency was requested to submit a response by August 1 on their position on these options and she reports that the agencies' positions are outlined on page 9 of the August staff report. She says that when the August staff report was prepared, the City of San Bernardino's position had not been provided, but she says subsequent information has been submitted indicating that the City's Municipal Water Department supports consolidation. Based on those agencies' positions and supplemental information provided in the September staff report, including a change in the City of Riverside's position to support consolidation with certain terms and conditions, and the full response from the District to the issues raised in the August staff report, Ms. McDonald says that staff still concludes that multiple agencies performing the same service in a given area does not appear to be the most effective and efficient way of service delivery.

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Ms. McDonald says staff recommends that the Commission designate a zero sphere of influence for the District. She says that indicates that it is the Commission's position that a future change should take place; and, based on the positions of the major water producers, that change would be to look at the possibility of a consolidation with Muni. She explains that designating a zero sphere makes no change to the existing boundaries of the District and she says the Commission's Environmental Consultant Tom Dodson has proposed that the designation of a zero sphere is statutorily exempt from environmental review. She points out that the Commission has been presented this morning with a letter from the District objecting to the issuance of a statutory exemption for a zero sphere designation and says Mr. Dodson will address that after her presentation. Ms. McDonald says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) determine that the designation of a zero sphere of influence for the District is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption; (2) designate a zero sphere for the District, indicating that it is the position of the Commission that the District should ultimately consolidate with Muni; (3) direct the Executive Officer to establish a committee made up of the major water stakeholders in the District to develop the parameters needed for consolidation and present a report at the February 15, 2006 hearing of the terms and conditions needed for a consolidation; and (4) adopt LAFCO Resolution No. 2893 setting forth the Commission's findings and determinations for this consideration. She notes that a letter has been received from the Western Municipal Water District (hereinafter referred to as "Western") requesting a seat on the committee to be established. Ms. McDonald says that if the Commission, after hearing the testimony today, determines that the Municipal Service Review (hereinafter referred to as "MSR") shows that affirmation of the District's existing sphere or a coterminous sphere is appropriate, staff has provided on page two of the staff report an alternative staff recommendation which would provide for affirmation of the District's existing sphere or its amendment to a coterminous sphere, with deferral of adoption of a resolution making those determinations to the October 19, 2005 Commission hearing.

(It is noted that Commissioner Nuaimi arrives at 9:50 a.m.)

Ms. McDonald reports that the Commission has been presented this morning with a letter of opposition from the City of Highland indicating its concern that the Commission has been presented with proposed findings and legal justification for the consolidation of SBVWCD and Muni, without being presented with "a professional, unbiased, independent evaluation of the serious potential environmental, legal, financial, jurisdictional and service considerations associated with the decision." She reports that the Commission has also been given a letter this morning from the SBVWCD indicating that staff has failed to evaluate the effects of a future consolidation. She says that is true—that staff has not addressed the effects of a future consolidation because there is none and consolidation is only speculation at this point. She says those types of issues raised in the City of Highland's letter and the District's letter should be reviewed and discussed by the members of the committee that staff has recommended be established. She says Mr. Dodson will now address the environmental consideration issues and respond to the letters presented today.

Mr. Dodson discusses how he reached the conclusion that a statutory exemption was appropriate, explaining that with the designation of a zero sphere, the Commission is saying that the District is no longer responsible for planning in the area. He says there is no physical change in the environment with a zero sphere designation. He says the issue in the disestablishment of a sphere, with the recommendation that there be planning to go forward for a future consolidation, is whether that decision is related to the consolidation. He says if the Commission adopts staff recommendation, it is indicating that the Commission's position is that the District ultimately consolidate with Muni, but he says that action does not result in the consolidation. Mr. Dodson discusses that all the comments in the District's September 19, 2005 letter, after the first two paragraphs, assume that there will be a consolidation and that the result will be a different operating mode by the new entity. He says none of that exists now and in his judgment the City of Highland and the District are trying to "bootstrap" the consolidation issue into being the primary focus before the Commission. He says if the Commission approves a zero sphere today, there is no assurance that a consolidation will be approved in the future. He says there is nothing in front of the Commission today to consider and, with no plan of some future entity's operating mode, there is no way to say whether there could be any physical change in the environment. He says he concurs with Ms. McDonald that consideration of consolidation is too speculative at this point. He says

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he believes that if the Commission adopts a statutory exemption for this project, it is saying that a zero sphere designation will cause no physical change in the environment and he says a statutory exemption is an appropriate action for CEQA compliance. He says the City of Highland and the District are switching the issue from the sphere and are saying that it is the consolidation that actually has the potential for impact.

Chairman Biane opens the public hearing, asking the Clerk to time the speakers for three minutes.

Cheryl Tubbs, President of the Board of the SBVWCD and a resident of Mentone, says the District was told each representative would have five minutes to speak. Chairman Biane says he will not give the District 15 minutes, but he asks that the speakers try to consolidate their comments and do their best to stay within the three-minute time limit. Ms. Tubbs states she hopes the Commissioners have read through all the material presented because it is the District's opinion that this review has gone past what has been done in other MSRs in the past two or three years and has turned into a land grab, a grab for water rights and a money grab. She says agencies have signed memoranda of understanding (MOUs) and are ready to file an application for consolidation if the District is given a zero sphere. She reports that the MSR was originally submitted in October 2003 but was not presented to the Commission until March of 2005 due to the need for clarification on information and she says that has given a lot of time for people to take different positions, for a lot of distractions to occur, and for this review to go beyond what is typically evaluated and discussed in an MSR. Ms. Tubbs discusses that the District's mission when originally formed in 1931, and what it has continued to do, is to take Santa Ana River water and Millcreek water and recharge it into the Basin, and that the people who voted for the District wanted assurance that local water from the San Bernardino Mountains would stay local. She discusses that in 1977 she went to work for Muni, where she did long range land use planning. She says that while there, she heard derogatory comments about the District and says that during the period 1977 through 1979, the people at Muni seemed to have a philosophy that taking over the SBVWCD would be beneficial because Muni could do a better job. She says she did not buy into that then and still does not; and she says those two entities were formed for different purposes and there would be no efficiencies by merging them. She says a major misunderstanding in the staff recommendation is that there be one Basin manager; that people here today are frightened and appalled by the fact of having one Basin manager; and that they cannot take hydrologic boundaries and say they should match City or Water District boundaries. She says there needs to be an integrated Basin management plan, not one dictator who decides what happens throughout the whole San Bernardino Valley area. She asks that the Commission recognize the cooperative effort that is going on among the Valley water producers, stating they have signed an agreement to work together and need to take into consideration each of their responsibilities to protect the public supply of water.

Lawrence Libeu, General Manager of the SBVWCD, states that staff's recommendation for a zero sphere seems to be motivated by the need for a more regional perspective on management of the Basin and by a potential cost savings. Mr. Libeu discusses that since the August hearing, the District, Muni, and Western have entered into a settlement agreement which ends a long time battle over water rights issues and competing water rights applications before the State. He explains that all three parties have agreed to withdraw protests against each others applications and to support them and says the agreement provides for the management of the entire Basin by all managers and users in the groundwater area. He says all the parties are talking together, which has not happened in 25 years; that he worked long and hard to make the agreement happen; and that consolidation or a zero sphere will not let it happen. He says everybody has a voice under the new process and that LAFCO should not take the District's voice away through a zero sphere designation. Mr. Libeu discusses the District's finances and reports that the District's groundwater charge is one of the lowest in the State; that it was initiated in 1993 because the major source of the District's revenues at that time, mining royalties, were beginning to vary and decline. He says today they are flush and says that at the direction of the Board, District staff is working on a financial analysis that will either substantially lower the groundwater charge or suspend it due to a period of high mining revenues. He says the staff report discusses the District Board's expenses and it indicates that if all seven Directors went to every possible meeting under the law, \$136,000 would be spent. He points out that has never happened and says it never will because of the Board's strict guidelines. He notes that Muni has budgeted \$163,000 for its five member Board, while SBVWCD has seven members

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with a total expense of \$53,000, so he sees no savings there. Mr. Libeu concludes by saying if staff's goal is to encourage a more regional perspective on groundwater management in the Basin, that has been done with the settlement agreement. He says if staff's goal is to assure a cost responsible agency, the District has done that. He asks that the settlement agreement be given a chance to work; that it is a solution generated by participants, while consolidation or a zero sphere is a solution imposed from the outside. He says the staff report does not accuse the District of not doing its job or doing its job poorly.

David Cosgrove, General Counsel for the District, states that the Commission has been asked today to put into motion a process that ultimately will lead to consolidation and says where he disagrees with Mr. Dodson is that he reads the law that where parties have indicated what they are going to do in response to the initiation of that process, which they have through the MOU's, then the impacts have to be assessed. But he says that is a legal fight for the future. Mr. Cosgrove says consolidation will put at risk or eliminate three things that the SBVWCD brings to benefit this area that are unique. First, he says the District spreads on the average of 15,000 acre feet per year in the Santa Ana River and has licenses for 10,400 of those acres, with the balance being pre-1914 rights. He discusses that if the District is consolidated with Muni, those pre-1914 rights will be lost because Muni has taken the position that those rights do not exist and has indicated in its MOU that it is going to withdraw the District's application before the State to defend those rights. He says it would be better, in the cooperative mode offered through the settlement agreement, to keep those rights alive and working for the people of this area instead of eliminating them through consolidation. Second, Mr. Cosgrove says they also believe the groundwater charge would be eliminated, since Muni's founding statutes do not allow it. He says that although the District is flush now, throwing out the groundwater charge mechanism would be shortsighted policy making and says the groundwater charge is better than property taxes which are so much a part of Muni's funding source. He says the groundwater charge is very important in connection with the varying of mining revenues. Mr. Cosgrove discusses that with consolidation, the Wash Plan will be lost. He reports that the SBVWCD conceived of that monumental effort and says that not only does Muni not participate in the Wash Plan, but has withdrawn from it, accusing it of being nothing more than a cover for the SBVWCD's defense of its water rights. He says the benefits of the Wash Plan are huge and there is no reason to risk that Plan. Mr. Cosgrove concludes by stating that the answers to Ms. McDonald's question as to why three agencies should exist in the same area are: (1) it works; (2) the Commission has not been given any real reason to eliminate it, only hazy possibilities; and (3) with consolidation, benefits that only the District can produce will be lost.

Gary Nolff, Assistant Director/Resources, City of Riverside, states that the City of Riverside is the largest extractor of groundwater from the Basin and that at the July 15 Public Utilities Board meeting, staff was directed to send LAFCO a letter indicating that the Board advocated the status quo while additional research and consideration on consolidation took place. Mr. Nolff reports that, subsequent to that letter, the City entered into negotiations with Muni and Western and ultimately negotiated a MOU that was approved by the Public Utilities Board on September 16, the Riverside City Council last night, has been approved by Muni, and is being considered today, he believes, by Western. He says the Public Utilities Board had concerns it wanted carefully considered and monitored if there is to be a change in the jurisdictional boundaries or functions of the SBVWCD, such as--that the assets of the District, including its water rights, are properly used for recharge and benefit of the extractors in the Basin; that the Basin extractors have a say in how the assets are used over time and in the future and they be cognizant of the potential for any conflict of interest with respect to Muni being half the watermaster for the Basin, as well as now acquiring for the first time water rights in the Basin. He says staff is recommending that the City be part of the committee to consider consolidation.

Ross Jones, Mayor of the City of Highland, summarizes the City's letter of opposition, a copy of which has been presented to the Commission. Mayor Jones discusses the City's concern with Muni being able to perform the statutory roles of both agencies impartially, in a manner that will preserve the superior quality of their groundwater and give priority to local groundwater control and water availability. He says they believe there is a basic incompatibility in the statutory roles of the District and Muni which will prevent Muni from being able to make their water resources its primary concern. He says they are concerned that Muni might prefer to perform its role as a watermaster for the Riverside Judgment or for its own financial reasons blend State Project water with the local Basin groundwater, which he says

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would degrade the quality of water in the East Valley Water District which provides water for Highland and the City of Redlands Municipal Utilities Department. He says they think the relationship between the two Districts provides a strong check and balance for the community with respect to water resources. He also discusses the City's concerns that the Plan B (also known as the "Wash Plan") may be jeopardized by consolidation. Mayor Jones says the City Council requests that the Commission complete the MSR and sphere update as required by law and table any consideration of consolidation of SBVWCD and Muni and requests that the status quo be maintained because of the separate roles and responsibilities of the two Districts which have a legal basis that is beneficial to the City's community and constituents.

Patrick Milligan, President of the Board of Directors of Muni, states that he found Ms. Tubbs' remarks that what was occurring today was a land grab, a money grab, a power play, or that Muni was attempting to become a dictator, offensive. Mr. Milligan points out that the SBVWCD represents only a small number of taxpayers in the Valley, while Muni represents a huge number of taxpayers in Valley, and he says Muni believes those taxpayers should have a say in water conservation, spreading and importation matters. He says the people in this Valley own a billion dollars worth of supplemental water and that Muni tries to use it in concert with native water and tries to work out a management plan that will benefit everybody in the Valley. He points out that SBVWCD does not represent anyone in Rialto, Bloomington, Muscoy and a large portion of San Bernardino. He says they hope this agreement that has been reached will stop the terrible fights between the District and Muni that have been occurring over the years and the millions of dollars that have been expended in these fights. He says whatever action is taken in the future, it should benefit all the people of the Valley.

Chairman Biane asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Sedano tells the audience that the Commission is doing its job as directed by Government Code Section 56430 and he says it will be a tough job and not everybody will be happy. He says they have received a ton of paper from both sides and now this morning have received more information to read. He says he takes offense to getting paperwork at the last minute when this item has been before the Commission for several months. He says those that submitted this information had ample time to provide it so it could be read before the day of the hearing when a decision is to be made.

Commissioner Hansberger discusses that although the matter today is simply a sphere review, the staff recommendation contains a potential subsequent action in that it recommends that a zero sphere be designated and a committee formed regarding a possible consolidation. Ms. McDonald says that as a function of the MSR, the Commission is authorized to initiate some future action and that staff's recommendation was to look at what that possibility might be and that a committee be formed to address some possible consolidation issues. She says whether the Commission moves forward with that is a policy decision. Commissioner Hansberger says the testimony is confusing because people are talking about the two actions—a zero sphere and a successor agency, when technically the matter of the successor agency is not before them, even though the staff report refers to that possible succession. Ms. McDonald explains that the major stakeholders in the area were questioned about their position on the possibility of consolidation and that staff is only saying that a future study should take place as to the possibility for consolidation. She says staff's review of the factors for the MSR and sphere update indicate that a zero sphere is appropriate; but, if the Commission after the testimony today believes that a separate agency needs to be retained for this portion of the Basin, it can affirm the District's sphere or make it coterminous.

Commissioner Hansberger comments that if the Commission is going to determine that the District should have a zero sphere, concluding that the District should not exist, does not the Commission have an obligation to talk about what the impacts of that will be and how to dispose of the District's duties and responsibilities into the hands of another successor agency before the demise of the District is determined. He says there are some issues at stake, such as water rights, that people have a need to know some answers to before they say the District should go away. Ms. McDonald says a sphere is a planning tool and that the Commission would be indicating its preference that some future action take place. She says there is no guarantee that consolidation will take place or that an application will be

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submitted. Commissioner Hansberger says that on the surface, putting these two agencies seems to make sense, but he says the process for doing that is awkward—that they are telling an agency to go away, when they do not have any answers of what will happen when it is gone. He discusses that they need to know whether or not the water rights can be succeeded to by another agency; that they need answers related to water conservation and the Wash Plan—what will happen to it and who will inherit its responsibility. He asks whether they are taking any risks in making a decision today for a zero sphere designation. Ms. McDonald says the Commission is taking no action to change the area in which the SBVWCD provides its service and is making no change to the existing operation of the District, except to say it has no room for growth. She points out that the Commission can eliminate the recommendation related to the possible consolidation and creation of a committee and just make a sphere determination, indicating that at some point a change should occur. Commissioner Hansberger says there are important things left up in the air and he says if the goal is consolidation, it would be better to have a plan in front of them. Ms. McDonald says an option is to defer this consideration and only approve recommendation #3 directing the Executive Officer to establish a committee and return in February with a report.

(It is noted that Commissioner Gonzales arrives at 10:40 a.m.)

Commissioner Pearson says Commissioner Hansberger's point is good. He says MSRs are major efforts and the fact that this one deals with water makes it more challenging. He says they are looking at two things, the first of which is putting together a committee to examine the issue, and he says it looks like important steps have already taken place as far as MOUs and people talking to each other. He says, however, the trigger to kicking things off will be designating a zero sphere, which will cause a lot of things to start happening, maybe sooner than they want, because there is no plan of what will be in the future. He says it is important for the "hands on people" that deal with these issues to meet as a committee and determine a plan for the future. He says when the Inland Empire West Resource Conservation District was given a zero sphere, there was a plan in mind.

Ms. McDonald says staff was requested to go back and review the three options with the local water producers, and she says their positions were outlined in the August staff report. As discussed earlier, she indicates that the City of Riverside's position changed from that in the staff report. She says that is why staff recommended putting together a committee to look at potential terms and conditions to address issues like water rights and personnel issues. She says it remains to be seen whether anyone will initiate consolidation or whether the Commission will initiate consolidation.

Chairman Biane announces at 10:50 a.m. that he needs to leave. Vice Chairman Colven assumes the chair.

In response to comments by Commissioner Hansberger, Tom Dodson says the sphere issue before the Commission, in his judgment, is simply the Commission's way of expressing its opinion as to whether something should happen; it will have no physical effect. He explains that by approving a zero sphere, the Commission is saying it needs to pull together information to address the consolidation issue; a zero sphere does not change the District's operations or force consolidation, but allows information to be brought back so the Commission can see whether consolidation is justified and then what the environmental consequences of consolidation would be.

Commissioner Hansberger asks if they took an action today to approve a zero sphere, conducted the review in recommendation #3 and came to no successor conclusion that is appropriate, could the Commission reverse its action and create a sphere. Ms. McDonald responds it could because a sphere, as a planning tool, is a determination solely made by the Commission, and can be changed in the future. She says if a review is undertaken on a possible consolidation and the report brought back in February says consolidation is impossible, the sphere issue can be addressed again.

Commissioner Nuaimi says it strikes him that the primary goal is to have the Basin recharge planning done on a regional basis; that there are currently multiple agencies doing that; and that he knows the District is opposed to the option that its sphere be expanded to encompass the entire Basin. He says that a decision for a zero sphere strikes him as a predetermination of which agency should go away; and he

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says he is not comfortable making that determination now, without knowing answers related to water rights and other issues. Ms. McDonald explains that was her response that as a planning tool, the Commission designate a zero sphere to indicate that it is its regional perspective that water recharge and replenishment should be addressed at a Basin level and, without the sphere expansion for the SBVWCD to encompass the whole Basin, it is the Commission's opinion that some other regional entity should look to that. She says the response from a number of the water producers consulted with was to look at consolidation with Muni, which is the reason for recommendation #3. She says the issues brought up today, such as pre-1914 rights, will be addressed by the committee and a report presented in February, at which time the Commission would be able to say it believes the District's sphere should be expanded to encompass the entire Basin. Commissioner Nuaimi says his perspective is why not expand the sphere, allow the consolidation discussions to occur, and, when they fail, have the Commission make the decision if the agencies are unable to come to agreement. He says this will be up for review again in five years and he heard testimony that there are agreements and settlements in place and the parties want time to perform. He says he does not know what happens to an agency if it has a zero sphere and asks whether they are saying that to get to the goal of a complete recharge management for the Basin, the Commission has determined that the District is incapable of expanding to do the entire planning for the entire Basin. Ms. McDonald explains that with the zero sphere, the District will have no obligation to plan for future expansion; there is no physical change that occurs to the District; its requirements to plan for recharge are not taken from it because the District exists and must plan for service provision of the agency that still exists. She says the zero sphere was recommended because neither the District nor the major stakeholders supported expansion of the District's sphere. She says staff's position then was-- if water recharge replenishment is to be done on a regional basis, what are the regional agencies that could address that? She says there are two—Muni and the FCD. She reiterates that Public Works Director Pat Mead concurred with the District that the two agencies' purposes are different, so that option was not supported. She says there were varying levels of support for Muni. She says staff's requirement was to present information for a MSR and sphere update that should address regional water recharge for the Basin, so staff recommended the zero sphere and future discussion of the possibility of consolidation.

Commissioner Hansberger moves, seconded by Vice Chairman Colven, that the Commission indicate its intent to adopt staff recommendations #1 and #2 at the February 15, 2006 hearing, direct the Executive Officer to establish a committee to review possible consolidation, and require that the report provided at the February hearing respond to questions on the effectiveness and efficiency of a potential future successor, discussion about the preservation of the Wash Plan, and discussion of the potential impacts to water rights. Vice Chairman Colven says he thinks this discussion has raised more questions than it answered.

Commissioner Luellig asks what authority they have to task these agencies to cooperate with staff. He suggests zeroing out every agency's sphere so they will have to get together and decide which one will be in charge. He says he thinks they are giving staff an impossible task with agencies that are fighting each other. Ms. McDonald responds that many of the agencies recommended to be on the committee are not in this County so the Commission has no ability to address their spheres and she says the mutual water company has no sphere. She says staff has had no problem with any agencies involved in this review failing to provide a response and she says it has only been lately that responses were provided right before the hearing.

Mr. Dodson says he thinks the Commission does need to indicate that it is going to make a decision in February, which will force the agencies to come to the table with their information.

Commissioner Williams comments that if all parties do what is being asked in recommendation #3, recommendations #1 and #2 may take care of themselves and the parties may present a plan of action that the Commission can accept or reject. She says her concern is saying they intend to take such an action in February. She says it is fine to say they will look more carefully at that action in February, but she does not want to say that is a given answer. Ms. McDonald responds this is only an indication of intent and says that information provided in February may change the Commission's intent. Commissioner Williams discusses the consolidation of the two resource conservation districts, noting that the two districts did not want to consolidate but did, and they became a much better entity as one.

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Commissioner Sedano asks for Legal Counsel Clark Alsop's input related to a zero sphere and water rights. Mr. Alsop responds that a zero sphere is a planning tool; that such a designation is a policy decision for the Commission based on the information presented; and that a statutory exemption is appropriate. He says he does not know the answer to the water rights issues but says the Commission can find those answers out. He says Commissioner Hansberger's concept is a policy decision, noting that they have discussed whether to establish a zero sphere and then do a study or do a study and then do something based on the issues raised from the study. He says the motion on the floor is that, based on everything the Commission has heard, it intends to establish a zero sphere but wants to have a study done before making a final decision.

Commissioner Curatalo says the first issue before the Commission is still whether or not this District should go away—which is what they will arrive at with the zero sphere designation. He says water is a very complicated issue and having a single purpose agency for groundwater management is very important—a good thing now and will be a better thing in the future. Regarding the question of whether the SBVWCD should exist or whether plans should be made to change the current arrangement, Commissioner Curatalo says that after reviewing all the information, it appears there have not been any great questions raised about how the District manages money and he finds no indication that there will be any great savings through any change. Regarding the question of efficiency and effectiveness of the District, he says he does not believe any shortfalls or shortcomings have been pointed out that would compel the Commission to say the District is not doing its job and they need to look at a wholesale change for the District. He says he knows that in performing the MSRs, the Commission will proceed with great caution with “hostile-type takeovers” and says these agencies do not agree on how to move forward in terms of a consolidation. He asks what the genesis for this is, noting that the last speaker indicated this was not a takeover or land grab or matter of competing agencies. He asks if there was an outcry from the public for answers to questions about financial dealings of the District or the services it performs.

Ms. McDonald responds that in staff's opinion, the general public does not know whether they are in or out of the District and she says the District has little constituency among voters charged to electing its representatives. However, she says the District indicated its constituency was the water producers, which is why staff put the options forward for their review and response. Commissioner Curatalo says that in the Commission's effort to have logical services and efficiency in government, he still does not believe any reports or testimony have convinced him that the District is not performing to its expected level warranting a drastic change such as this.

Commissioner Luellig comments that staff was not making a determination; he says common sense tells them they want a consolidated area because it makes sense. He says staff is recommending a study to see if consolidation does make sense. Commissioner Curatalo says that when consolidation makes sense, he is all for it; but he says he is not sure it makes sense in this case. Commissioner Luellig says he does not believe questions as to whether this makes sense have been answered and says he thought that was the purpose of the study. He says staff may come back with a report in February that says the District should be left alone, that it works perfectly. Commissioner Curatalo says maybe he still does not understand the exact purpose of zeroing out a sphere. He says it seems that the statement about a zero sphere designation was almost followed by a conclusion of what would happen if there were a zero sphere and the conclusion was very drastic.

Ms. McDonald says a zero sphere is a planning tool that indicates the Commission's position that ultimately some change should take place. She says staff recommendation #3 identifies that a committee be established to look at options, based on a review of all the options with the water producers. She says the zero sphere is an outgrowth of the water producers' opinions; that it makes no change to the existing structure of the District; no change in its Board or its responsibilities. She says that only at some future time, through a specific reorganization action, would a change take place. She says no support was received to expand the District's sphere. She says the motion on the floor is to indicate the Commission's intent in February to adopt recommendations #1 and #2, after the conclusion and presentation of the report identified in #3. She says that in February, if the materials presented through the completion of the

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study do not support consolidation and support the expansion of the sphere to cover all the Basin, the recommendation to the Commission would be changed.

Commissioner Luellig refers everyone to page 3 of the staff report. He says the question staff is asking, and that the Commission is asking staff to answer, is why there are three overlapping agencies within the eastern portion of the Bunker Hill Basin authorized to provide the same service—water conservation—and whether this division is appropriate.

As clarification to a comment by Commissioner Luellig, Mr. Dodson says that a sphere actually does trigger CEQA because it is a discretionary decision on the part of the Commission. He says what he has stated is that it does not trigger any physical change in the environment and that an exemption is the appropriate action to be taken as a CEQA determination.

Commissioner Nuaimi says he has listened to comments that there is no evidence that the District is not doing its job. He says, however, it is not about whether the District is doing its job or not but it is about evaluating what that job should be. He says the sphere review is about whether the District should be focused on recharge in a small component of the Basin or should there be regional recharge. He says the Commission needs to be able to explain to the public why there are three overlapping agencies performing redundant operations. He calls for the question.

Vice Chairman Colven calls for a voice vote on the motion and it is as follows: Ayes: Colven, Cox, Hansberger, Gonzales, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead).

(It is noted that the Commission takes a recess at 11:25 a.m. and reconvenes at 11:30 a.m., with no change in Commissioners present.)

DISCUSSION ITEMS:

CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED BY COUNTY OF SAN BERNARDINO FOR GENERAL PLAN AMENDMENT FROM 3M-RM TO RS ON 4.78 ACRES AND TENTATIVE TRACT 16756 TO CREATE 44 LOTS ON 12.5 ACRES AS CEQA RESPONSIBLE AGENCY FOR LAFCO SC#259; AND (2) LAFCO SC#259 – CITY OF REDLANDS OSC 05-31 FOR WATER AND SEWER SERVICE – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for approval of an out-of-agency service agreement submitted by the City of Redlands (hereinafter the “City”) that outlines the terms by which it will extend water and sewer service. Notice of this hearing has been advertised as required by law through publication in The Sun and the Redlands Daily Facts, newspapers of general circulation in the area. Individual mailed notice of this hearing was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

LAFCO Analyst Samuel Martinez presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Mr. Martinez says the City submitted this request on behalf of the property owner and says the agreement relates to two parcels that are adjacent to each other. He shows the location of the parcels on the map on the overhead display, pointing out that APN 0298-192-09 is generally located north of Colton Avenue, between Agate and Crafton Avenues, and that APN 0298-192-18 is located east of Agate Avenue, one parcel north of Colton Avenue. He says these two parcels combined make up Tentative Tract 16756, which is located within the City’s eastern sphere of influence within the community known as “Mentone”. Mr. Martinez says the property owner has processed a General Plan Amendment and Tentative Tract 16756 to create 44 lots on 12.5 acres, which was approved by the County Board of Supervisors on February 15, 2005. He explains that the Conditions of Approval placed on this project require connection to the City’s water and sewer facilities prior to recording of the final map. He says that all financial obligations will be the developer’s and says

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the required fees are outlined in the staff report. He notes that the developer will be required to install fire hydrants and the future occupants of the residential development will be charged approximately 15% more than the in-City water rate and about 8% more than the in-City rate for sewer.

Mr. Martinez reports that the County of San Bernardino prepared an environmental assessment for the Tentative Tract and General Plan Amendment, indicating that the project would not have a significant effect on the environment through its development under the Conditions of Approval. He says the Commission's Environmental Consultant Tom Dodson and & Associates has reviewed the County's environmental assessment and has indicated that the Initial Study and Negative Declaration are adequate for the Commission's use as a CEQA responsible agency. Mr. Martinez says the development of the Tentative Tract requires the receipt of water and sewer service from the City, as outlined in the Conditions of Approval attached to the staff report, and that approval of the service contract is necessary to satisfy those Conditions of Approval. He says the City's facilities are adjacent to both parcels and that no other entity can provide the services other than the City. Mr. Martinez says the staff recommendation is outlined on pages one and two of the staff report and includes that the Commission: (1) take the actions listed for environmental review; (2) approve SC#259 authorizing the City to extend water and sewer service outside its boundaries to Tentative Tract 16756; and (3) adopt LAFCO Resolution No. 2895 setting forth the Commission's findings, determinations and approval of the service contract.

Vice Chairman Colven opens the public hearing and calls on Ernie Givens, who submitted a request to speak. Ms. McDonald states that evidently Mr. Givens had to leave. When asked if she knows what Mr. Givens' position may have been, she reports that he has historically opposed the City's requirement for pre-annexation agreements as a precursor to provide water and/or sewer service by the City in the Mentone community. She says, however, that is just her presumption in this case. Vice Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Hansberger moves approval of staff recommendation, seconded by Commissioner Nuaimi.

Vice Chairman Colven calls for opposition to the motion. There being none, the voice vote is as follows: Ayes: Colven, Cox, Hansberger, Gonzales, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Gonzales voting in his stead).

CONSIDERATION OF REQUEST FOR REDUCTION IN FILING FEES AND WAIVER OF INDIVIDUAL NOTICE SUBMITTED BY SAN BERNARDINO COUNTY CONSOLIDATED FIRE AGENCY FOR LAFCOS 3000/3001 – COUNTY FIRE DISTRICTS REORGANIZATION – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request submitted by the San Bernardino County Consolidated Fire Agency for a reduction in filing fees and a waiver of individual notice for LAFCO 3000--County Fire Districts Reorganization and LAFCO 3001--Sphere of Influence Review (Expansions) for the Yucca Valley Fire Protection District (all County Fire Protection Districts and CSAs) and (Reductions) for Central Valley Fire Protection District, County Service Area 38, Forest Falls Fire Protection District and Lake Arrowhead Fire Protection District. Notice of this hearing has been advertised as required by law through publication in The Sun and the Victor Valley Daily Press, newspapers of general circulation in the area. Individual mailed notice of this hearing was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that the County has submitted what may be the most monumental application in this Commission's history—the reorganization of the 27 fire protection districts and county service areas providing fire services into a single fire protection district. She says the County has submitted two requests related to the processing of its applications: (1) a request for reduction in the filing fees charged for processing; and (2) a waiver of the individual notice requirement for a sphere review and reorganization application.

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Ms. McDonald summarizes all the actions required by both proposals, which are outlined in the staff report. She says Supervisor Postmus, Chairman of the Board, submitted a letter requesting that the fees for these applications be reduced to a total of \$61,950, which he indicates is a reduction of \$46,500. She says that while staff concurs that the fees should be reduced, staff does not believe they should be reduced to the level identified by the County. As outlined in the staff report, she discusses that pursuant to the Commission's Fee Schedule, the sphere review would be assessed fees totaling \$112,200 to achieve the desired changes. She identifies that staff is recommending that the fee for the sphere review be reduced to \$10,250, rather than \$5,000 as requested by the County. She also discusses that pursuant to the Commission's Fee Schedule, the full fees that would be charged for the massive reorganization proposal would be \$255,700 and says staff is recommending that a total of \$121,200 be assessed for the reorganization proposal, rather than a reduction to \$56,950 as requested by the County.

Ms. McDonald says the County's second request relates to the individual notice requirement, noting that State law allows the Commission to waive individual notice and require notices to be advertised in newspapers. She says staff intends to broadcast notice of these applications to representatives of all the involved communities. She notes that once the complete application is on file, over 195 copies of the materials will be sent out for review and comment. Ms. McDonald says the staff recommendation is that the Commission: (1) approve a reduction in filing fees for LAFCO 3000 and LAFCO 3001 as outlined in the staff report; and (2) waive the requirement for individual notice for LAFCO 3000 and LAFCO 3001, with the requirement that the matter be broadly publicized with one-eighth page display ads placed in newspapers of general circulation and local newspapers throughout the territory of the reorganization proposals. She notes that the Commission has been presented today with a letter from John Coffey, on behalf of the Newberry Springs Community Services District (CSD), which opposes the application itself.

Commissioner Cox asks what Mr. Coffey's position is. Ms. McDonald responds that Mr. Coffey is present and has requested to speak. Commissioner Cox says it is her understanding that staff bills for time spent. Ms. McDonald explains that deposits are required for things such as environmental review, Registrar of Voters' services for certifications and notice to voters, and property owner notice and legal advertising. But she says the balance of the time is a function of the flat fees and why the Fee Schedule is designed where each component is charged. Commissioner Cox asks if there is sufficient staff, given the enormity of this project. Ms. McDonald says she believes there is sufficient staff because the County has committed to assist staff in gathering all the information. She says if additional staff or consultants are required, she will come to the Commission for authorization.

Commissioner Luellig asks how the County is handling various volunteer fire departments. Discussion follows, with Ms. McDonald stating that staff will find out information related to that in the review process.

Commissioner Sedano asks whether staff will respond to Mr. Coffey's communication. Ms. McDonald says staff ultimately will, noting it will be a part of the review of the overall application.

Vice Chairman Colven calls on Mr. Coffey, noting the Commission has his letter and asking that he quickly outline his comments.

Mr. Coffey states he is the Board Administrator of the Newberry Springs CSD and a resident in the Hinkley Fire District and Hinkley CSA and is here on both issues in a professional capacity for the CSD and as an individual because he is impacted on both aspects. He thanks Ms. McDonald and staff for the quick turnaround in providing him a copy of the County's application. He asks for ten minutes for his presentation. Vice Chairman Colven says he may have five minutes. Commissioner Luellig says he knows Mr. Coffey wants to address the reorganization issue, but he points out that the only issues the Commission is considering today are the reduction in filing fees and waiver of individual notice so that the application processing can begin. He says discussion of the issues and arguments will take place later. Mr. Coffey says notice and a meaningful opportunity to be heard are part and parcel of a democracy and a procedural right. He discusses that this issue will affect every resident or person visiting the High Desert on a daily basis and says that residents, business owners and tenants in possession need to be notified of these proposals to be sure that when the Commission makes its decisions, it will hear from all

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affected parties. He discusses how this may affect fire insurance. He discusses that a future City of Newberry Springs, with a northern boundary of Ironwood and an eastern boundary of Ludlow would be prevented from providing fire service outside of what the existing boundaries of the CSD are today.

(It is noted that Commissioners Hansberger and Gonzales leave at 11:55 a.m.)

Mr. Coffey says this is a huge and complex application and the first thing that must be done is to let the affected people know what the County has planned. He says he has a problem, and also thinks State law does, with the County representatives sitting on this Commission and making a decision on the County's application. He says notice, a meaningful opportunity to be heard, is a Federal constitutional right and a violation of that right gives rise to a Federal judicial remedy.

Vice Chairman Colven assures Mr. Coffey that there will be a lot of notice given regarding these proposals. Commissioner Williams says that Mr. Coffey's letter states that Ms. McDonald works directly for Mr. Postmus. She tells him that he is misinformed; that Ms. McDonald is employed by this Commission, not Mr. Postmus.

Commissioner Sedano asks for Legal Counsel Clark Alsop's comments on Mr. Coffey's statement about the members of the Board of Supervisors sitting on this Commission and that representing a quorum of the Board. Mr. Alsop first points out that a U.S. Supreme Court decision says that these kinds of changes of organization do not impact the Constitution. He says Cortese-Knox-Hertzberg permits Board of Supervisors members to serve on this Commission and vote on matters in their districts and always has. He notes that at one time, City and Special District members were not permitted to vote on matters in their city or district, but he says the Legislature changed that law decades ago so that each Commissioner here can vote on issues related to whatever area they represent.

Commissioner Nuaimi asks about the Brown Act violation issue raised in Mr. Coffey's letter and he asks what the Commission's notification requirements are. Mr. Alsop explains that having three Supervisors present on this Commission at the same time is not a Brown Act violation because this is a noticed meeting. He says as long as people are attending a noticed meeting, there does not have to be notice of two meetings. He discusses that this Commission generally goes beyond the legal requirements in providing individual notice. He says there is no legal requirement to provide individual notice, other than to those who have requested it. He says the statutes provide that if more than 1,000 people are entitled to receive notice, the Commission can waive individual notice and indicate that notice will be provided by newspaper publication. Commissioner Sedano tells Mr. Coffey that the Commissioners are dedicated and put on their LAFCO hats when they come here. He says they have to make tough decisions but they do it and are not biased.

Steve Miller, Assistant Fire Chief of the Newberry Springs Fire Department, says the CSD was formed in 1958 for the primary purpose of getting control of the local fire protection. He says they have operated continuously as a Fire Department since that time; that last year they had 366 emergency responses and covered 98% of those calls with volunteers; and they receive mutual aid on a number of calls. He says that about one third of the calls are mutual aid calls going outside of their District, with the County being their primary customer. He says the CSD's Fire Department and the County Fire Department have enjoyed an excellent working relationship over the past five to ten years. However, he says the letter from Supervisor Postmus leaves a lot of questions in his mind about what the real plan and intent of this process is.

Vice Chairman Colven tells Chief Miller that his presentation will be appropriate when the Commission discusses the application. Chief Miller says he wants to be able to provide input as this progresses to be sure they have the ability to preserve life and property in the High Desert. He says there is not a single agency out there that can be totally self-supporting and that they rely on each other.

Vice Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

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Commissioner Cox moves approval of staff recommendation, seconded by Commissioner Nuaimi. Vice Chairman Colven calls for opposition to the motion. There being none, the voice vote on the motion is as follows: Ayes: Colven, Cox, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane, Hansberger.

(It is noted that Commissioners Williams and Nuaimi leave at 12:07 p.m.)

PENDING LEGISLATION

Ms. McDonald states she does not have a pending legislation report.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald says the Commissioners have been given a written Executive Officer's report. As the first item on this report, she says she is requesting that the Commission reestablish the Administrative/Personnel Committee, which, following the loss of Commissioner Bagley after the November election, was only left with one member. She says the Committee is to be made up of the Chairman, Vice Chairman and immediate past Chairman and says its reestablishment will place Chairman Biane and Vice Chairman Colven on the Committee. She says since the immediate past Chairman would have been Commissioner Smith, who is no longer on the Commission, a consensus of the Commission on filling the vacancy with the most recent past Chairman, Commissioner Pearson, is requested. It is noted that there is a consensus of the remaining voting Commissioners—Cox, Colven, Pearson and Luellig.

Ms. McDonald says the second item in her report indicates that the County Auditor-Controller has notified staff that three agencies have not paid their apportionment for LAFCO's costs—Parker Dam Park and Recreation District, Barstow Cemetery District and San Bernardino Mountains Community Healthcare District. She says the Commission can direct that their portion of the cost be deducted from their first proceeds of taxes. It is noted that there is a consensus of the Commissioners to direct the Auditor to do so.

Ms. McDonald reports that the October 19 agenda will include two annexations to the City of Redlands and a continued item for a request for an exemption for an out-of-agency service contract for the provision of water service by County Service Area 70 Improvement Zone J to territory in the City of Hesperia.

COMMISSIONER COMMENTS

Commissioner Cox asks whether they need to discuss starting the meetings earlier or having them on a different day, given the length of the discussion today and the fact that she sees these weighty-type issues continuing in the future. She says the hearings conflict with the SANBAG meeting and she thinks it does not do justice to the Commission meetings when Commissioners are predisposed to run off to another meeting. She says she does not know whether the issue needs to be agendaized for discussion or if they can have input from staff on how to deal with that. Ms. McDonald says the problem has been the use of these Chambers; that the Civil Service Commission uses it for morning hearings and people do not want hearings on Monday or Friday. She says staff will look into the issue and provide options on using the facility on different days.

COMMENTS FROM THE PUBLIC

Vice Chairman Colven calls for comments from the public. There are none.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF SEPTEMBER 21, 2005**

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, ON MOTION BY COMMISSIONER PEARSON, SECONDED BY VICE CHAIRMAN COLVEN, THE HEARING IS ADJOURNED AT 12:10 P.M.

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

PAUL BIANE, Chairman